

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Yakov Halberstam,

Plaintiff,

v.

**Pro Custom Solar LLC d/b/a Momentum
Solar,**

Defendant.

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Civil Action No.

Jury Trial Demanded

COMPLAINT

Yakov Halberstam (Plaintiff), by and through his attorneys, **Kimmel & Silverman, P.C.**, alleges the following against **Pro Custom Solar LLC d/b/a Momentum Solar** (Defendant):

INTRODUCTION

1. Plaintiff's Complaint is based on the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. §227, *et seq.*

JURISDICTION AND VENUE

2. This Court has subject-matter jurisdiction over the TCPA claims in this action under 28 U.S.C. § 1331, which grants this court original jurisdiction of all civil actions arising under the laws of the United States. See Mims v. Arrow Fin. Servs., LLC, 565 U.S. 368, 386-87 (2012) (confirming that 28 U.S.C. § 1331 grants the United States district courts federal-question subject-matter jurisdiction to hear private civil suits under the TCPA).

1 16. Plaintiff did not request information from Defendant regarding solar energy.

2 17. Upon information and belief, when contacting Plaintiff, Defendant used a dialing
3 system which had the capacity to store or call phone numbers using a random or sequential
4 number generator.

5 18. Upon information and belief, Defendant maintains a stored list of 10 digit
6 telephone numbers of consumers in its database for collection and communication purposes.

7 19. Upon information and belief, Defendant utilize a “predictive dialing system”
8 which interfaces with software and databases which have the capacity to generate numbers
9 randomly or sequentially.

10 20. The dialing system used by Defendant call phone numbers stored in those
11 databases.

12 21. Accordingly, Defendant’s dialing systems have the capacity to dial numbers
13 using a random or sequential number generator.

14 22. Upon information and belief, Defendant’s dialing systems include equipment
15 which dials from the stored list of 10 digit consumer telephone numbers.

16 23. Defendant’s dialing systems employ computer code and/or algorithms which
17 result in it randomly or sequentially generating numbers in order to select and dial the stored
18 10-digit consumer telephone number from the list.

19 24. Furthermore, Defendant’s dialing systems use computer code and/or algorithms
20 to determine the orders/sequence of calls to be automatically dialed.

21 25. The operation of the random/sequential number generator, referred to above
22 results in Defendant’s dialing system automatically placing calls to the 10 digit telephone
23 numbers in Defendant’s stored list(s).
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25

1 26. Plaintiff believes and avers that Defendant called her with an automatic
2 telephone dialing system. Plaintiff believes this because Defendant's calls to Plaintiff began
3 with a noticeable pause or delay prior to a live representative of Defendant coming on the line.

4 27. While Plaintiff has not had the benefit of discovery, she intends to prove
5 Defendant utilized an automatic telephone dialing system in the course of discovery.

6 28. Defendant's telephone calls were not made for "emergency purposes" but rather
7 were to offer solar energy services.

8 29. Plaintiff found Defendant's repeated calls annoying, frustrating, upsetting,
9 harassing, and an invasion of her privacy.

10 30. Upon information and belief, Defendants conduct business in a manner which
11 violates the Telephone Consumer Protection Act.

12
13 **COUNT I**
 DEFENDANT VIOLATED THE TCPA 47 U.S.C. §227(b)

14 31. Plaintiff incorporates the forgoing paragraphs as though the same were set forth
15 at length herein.

16 32. The TCPA prohibits placing calls using an automatic telephone dialing system or
17 automatically generated or prerecorded voice to a cellular telephone except where the caller has
18 the prior express consent of the called party to make such calls or where the call is made for
19 emergency purposes. 47 U.S.C. § 227(b)(1)(A)(iii).

20
21 23. Defendant initiated multiple telephone calls to Plaintiff's cellular telephone
22 number using an automatic telephone dialing system.

23 24. The dialing system used by Defendant to call Plaintiff's cellular telephone calls
24 telephone numbers without being prompted by human intervention before each call.

1 25. The dialing system used by Defendant to call Plaintiff has the present and/or
2 future capacity to dial numbers in a random and/or sequential fashion.

3 26. Defendant's calls were not made for "emergency purposes."

4 27. Defendant's calls to Plaintiff's cellular telephone were without any prior express
5 consent.

6 28. Defendant's acts as described above were done with malicious, intentional,
7 willful, reckless, wanton and negligent disregard for Plaintiff's rights under the law and with the
8 purpose of harassing Plaintiff.

9 29. The acts and/or omissions of Defendant were done unfairly, unlawfully,
10 intentionally, deceptively and fraudulently and absent bona fide error, lawful right, legal
11 defense, legal justification or legal excuse.

12 30. As a result of the above violations of the TCPA, Plaintiff has suffered the losses
13 and damages as set forth above entitling Plaintiff to an award of statutory, actual and trebles
14 damages.
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16 **Wherefore, Plaintiff, Yakov Halberstam, respectfully prays for judgment as follows:**

- 17 a. All actual damages Plaintiff suffered (as provided under 47 U.S.C. §
18 227(b)(3)(A));
- 19 b. Statutory damages of \$500.00 per violative telephone call (as provided
20 under 47 U.S.C. § 227(b)(3)(B));
- 21 c. Treble damages of \$1,500.00 per violative telephone call (as provided
22 under 47 U.S.C. § 227(b)(3));
- 23 d. Injunctive relief (as provided under 47 U.S.C. § 227(b)(3); and
24 e. Any other relief this Honorable Court deems appropriate.
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DEMAND FOR JURY TRIAL

Please take notice that Plaintiff, **Yakov Halberstam**, demands a jury trial in this case.

Respectfully submitted,

Dated: 05/26/2021

By: /s/ Craig Thor Kimmel

Craig Thor Kimmel, Esq.
Kimmel & Silverman, P.C.

30 East Butler Pike

Ambler, PA 19002

Phone: (215) 540-8888

Facsimile: (877) 788-2864

Email: teamkimmel@creditlaw.com